

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CURTIS L. DOWNING,

**Plaintiff,**

V.

JO GENTRY, et al,

## Defendants.

Case No. 2:16-cv-02632-RFB-BNW

## ORDER

Before the Court are Plaintiff's Motion to Amend Complaint (ECF No. 80) and Defendants' Motion to Extend Time to File an Answer (ECF No. 82). At the hearing on March 5, 2020, the Court dismissed without prejudice all defendants who had not yet been served but permitted Plaintiff to file a Motion to Amend based upon his belief from information received that he had obtained the correct addresses for purposes of effectuating service, but service had been unsuccessful because no one had been home to receive service. ECF No. 81 at 12.

Plaintiff filed the instant motion indicating that he did not have correct addresses for Angel Contreras, Tyler Hochmann, Subhabrata Das, and Eyvi Rodarte. ECF No. 80 at 2. He indicates he did have correct addresses for Joshua Ortega and Minor Adams, but that service was not effectuated after several attempts because no one was home to receive service. *Id.* The Court notes that Ortega, Das, Rodarte, Contreras, Hochmann, and Adams were dismissed by the Court on July 11, 2019 pursuant to Federal Rule of Civil Procedure 4(m). ECF No. 70. Plaintiff also states that service on Jose M. Navarette was successful as of December 2018. *Id.* at 1.

Federal Rule of Civil Procedure 4(m) requires the Court on motion or on its own after notice to the plaintiff to dismiss an action without prejudice against a defendant who was not served within ninety days after the complaint was filed. However, “if the plaintiff shows good cause for

1 the failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ. P.  
2 4(m).

3 The Court construes the motion as a Motion for Issuance of Summons and Service, as the  
4 Amended Complaint already names these defendants and Navarette was successfully served,  
5 though the Court notes he has not responded to Plaintiff’s complaint in any way, despite having  
6 been served over one year ago. The Court will grant the motion in part and deny it in part. The  
7 Court will also allow for the reinstatement of defendants Ortega and Adams, as Plaintiff has shown  
8 good cause for the failure to effectuate service. Given Plaintiff’s incarceration, he is not capable  
9 himself of effectuating service and must rely on the U.S. Marshal’s Office to do so. The Court will  
10 deny the motion as to the remaining defendants, Angel Contreras, Tyler Hochmann, Subhabrata  
11 Das, and Eyvi Rodarte. The Court notes that Magistrate Judge Leen already granted Plaintiff’s  
12 motion to have service effectuated by the U.S. Marshals on these and other defendants in October  
13 2018, but the addresses provided by Plaintiff were incorrect. Given the amount of time that has  
14 since passed and the likely prejudice that would result, the Court declines to reinstate these  
15 defendants. Therefore Contreras, Hochmann, Das, and Rodarte remain dismissed from this action.

16 The Court will also grant Defendants’ Motion to Extend Time to File an Answer to the  
17 First Amended Complaint (ECF No. 82) as Defendants have cited good cause for the delay.

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1           **CONCLUSION**

2           **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Amend the Complaint (ECF  
3 No. 80) is **GRANTED** in **PART** and **DENIED** in **PART** as discussed in this order. The Clerk of  
4 Court is instructed to reinstate (1) Minor Adams and (2) Jose Ortega, issue summons under seal,  
5 and deliver the same to the United States Marshal for service along with a copy of this Order, the  
6 First Amended Complaint (ECF No. 64), and Sealed Submission of Last Known Address (ECF  
7 No. 18).

8           **IT IS FURTHER ORDERED** that after attempting service, the United States Marshal  
9 shall redact the process receipt and return forms so that the defendants' last known address is not  
10 made publicly available. The United States Marshall shall file notice with the Court, and serve the  
11 notice on Plaintiff, indicating whether each Defendant was served. Plaintiff must comply with this  
12 Order by completing service by June 8, 2020. The Court will not provide further extensions of  
13 service.

14           **IT IS FURTHER ORDERED** that Defendants' Motion to Extend Time to File an Answer  
15 to the First Amended Complaint (ECF No. 82) is **GRANTED**. Defendants shall have up to and  
16 including May 5, 2020 to file an Answer.

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18           DATED: April 9, 2020.



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**RICHARD F. BOULWARE, II**  
21           **UNITED STATES DISTRICT JUDGE**